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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 ART TOBIAS,

12 Plaintiff,

13 v.

14 CITY OF LOS ANGELES; SGT.
15 SANCHEZ, #25339; DETECTIVE
16 MICHAEL ARTEAGA, #32722;
17 DETECTIVE JEFF CORTINA,
#35632; DETECTIVE J. MOTTO,
#25429; DETECTIVE JULIAN
18 PERE, #27434; OFFICER
MARSHALL COOLEY, #38940;
19 OFFICER BORN, #38351; L.A.
SCHOOL POLICE OFFICER
20 DANIEL EAST, #959; and
UNIDENTIFIED EMPLOYEES of
the CITY OF LOS ANGELES,

21 Defendant.
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No. 2:17-cv-01076-DSF-AS

**Defendant East's Supplemental Reply
Brief in further support of Motion for
Summary Judgment**

Date: February 11, 2022

Time: To Be Taken Under Submission

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1 **Introduction**

2 Tobias's supplemental opposition does not add anything new to the
3 arguments he presented in his initial opposition.

4 As in his initial opposition, Tobias claims the fabrication claim is based in
5 part on statements made during the oral interview. But that contradicts the rulings
6 by this Court and the Ninth Circuit that the only possible basis for a fabrication
7 claim are the discrepancies between the oral interview and the written statement.

8 As in his initial opposition, Tobias claims that references to Officer East's
9 statement in in the written record of the criminal investigation create a factual
10 dispute as to whether the written statement was a cause in fact of depriving him of
11 his liberty. But he does not cite any evidence that would support a finding that the
12 written statement actually played a role in the arrest, detention, prosecution or
13 conviction.

14 The Court should grant summary judgment to Officer East.

15 **Argument**

16 The causation element of a fabrication of evidence claim requires proof that
17 "(a) the act was the cause in fact of the deprivation of liberty, meaning that the
18 injury would not have occurred in the absence of the conduct; and (b) the act was
19 the 'proximate cause' or 'legal cause' of the injury, meaning that the injury is of a
20 type that a reasonable person would see as a likely result of the conduct in
21 question." *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir. 2017). See also *Caldwell*
22 *v. City & County of San Francisco*, 889 F.3d 1105, 1115 (9th Cir. 2018) ("To
23 establish causation, [a plaintiff] must raise a triable issue that the fabricated
24 evidence was the cause in fact and proximate cause of his injury"). It is not enough
25 that the written statement "could have" contributed to Tobias's injury. Dkt. 283, p.
26 3.

1 ***A. Prior rulings by this Court and the Ninth Circuit established that the only***
2 ***basis for the falsification claim is the difference between the recorded***
3 ***interview and the written statement.***

4 Both this Court and the Ninth Circuit have made clear that, if Tobias has a
5 fabrication claim, it must be based on the difference between the recorded interview
6 and the latter written statement. (Dkt. 283, p. 2 (“here, we are asked to weigh the
7 sufficiency of the evidence with respect to discrepancies between East’s oral and
8 written statements”); Dkt. 270, p. 4 (“The alleged falsehood in question is East’s
9 written statement that he was “fairly sure” that the person in the video was
10 Plaintiff”); Dkt. 170, p. 16 (“While watching the surveillance video, Officer East
11 told Detectives that he had a hard time identifying anyone; he eventually identified
12 Plaintiff and said he was “so much smaller in real life.” Yet Officer East’s written
13 statement says he was “fairly sure” the suspect was Plaintiff because the individual
14 had a distinct walk and stature similar to Plaintiff, facts not mentioned in his
15 recorded conversation with Detectives”).)

16 The Ninth Circuit’s ruling should have put the matter to rest, because this
17 Court lacks jurisdiction to decide anything other than the issue remanded by the
18 Ninth Circuit. “A district court that has received the mandate of an appellate court
19 cannot vary or examine that mandate for any purpose other than executing it.” *Hall*
20 *v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012). Although Officer East
21 made these points in his reply brief following remand [see Dkt. 302, pp. 5-6],
22 Tobias’s supplemental opposition does not even mention them. He only points out
23 that he has been making this contention throughout the case. That is now beside the
24 point, because the Court is not considering such a claim.

25 The supplemental opposition also refers to evidence that supposedly shows
26 Officer East assisted the LAPD Detectives “in many ways that were unrecorded.”
27 [Dkt. 305, p. 9] But, there is no claim for unlawfully assisting the LAPD
28

1 Detectives. The claim that this Court is considering is for falsifying evidence that
2 was a cause in fact of the deprivation of Tobias's liberty.

3 ***B. There is no evidence that Officer East's written statement was a cause in***
4 ***fact of the deprivation of Tobias's liberty.***

5 Although the supplemental opposition argues that Officer East must have
6 submitted his written statement the same day that Tobias was arrested, that does not
7 address the Court's tentative conclusion that "no reasonable juror could conclude
8 that East's written report was a but-for cause of any of Plaintiff's harm given that
9 Plaintiff had confessed to the murder prior to the written report being delivered to
10 anyone involved in investigating the case." [Dkt. 304] Tobias has not provided any
11 evidence that Officer East submitted his written statement before Tobias was
12 arrested, nor any evidence that he submitted it before the LAPD Detectives
13 interrogated Tobias at the station.

14 Instead, Tobias falls back on his argument that the presence of Officer East's
15 written statement in the record of the investigation is enough to allow a reasonable
16 jury to determine that the written statement was a cause in fact of his harm. But he
17 overstates the rulings of the authorities he relies on. None of them state that the
18 mere presence of a document in the record of a prosecution is sufficient to create a
19 triable issue as to causation.

20 In *Caldwell*, "the allegedly fabricated identification was part of the
21 evidentiary record that Giannini reviewed prior to authorizing charges against
22 Caldwell. And there is no dispute that [the] identification was a crucial piece of
23 evidence against Caldwell." *Caldwell, supra*, 889 F.3d 1117. In other words, the
24 mere presence of a false identification in the record of a criminal case does not
25 establish causation in fact. Instead, the plaintiff must provide evidence that the
26 identification was reviewed in connection the filing of charges and that it was a
27 crucial piece of evidence against the accused. There is no such evidence in this
28 case.

1 In *Arnold v. Int'l Bus. Machs. Corp.*, 637 F.2d 1350, 1357 (9th Cir. 1981),
2 the Court pointed to the following facts as evidence sufficient to establish causation
3 in fact:

4 The Task Force would not have existed but for IBM. IBM brought the
5 information concerning possible criminal activity to the authorities.
6 IBM turned over to the Task Force the information that it had gathered
7 concerning the possible leaks of trade secrets during its own
8 investigation. An IBM employee, Callahan, was a member of the Task
9 Force. The Task Force relied heavily, perhaps exclusively, on IBM
10 personnel in determining what information constituted trade secrets,
11 and what documents were IBM documents. The district attorney relied
12 on IBM attorneys to provide appropriate witnesses to testify before the
13 grand jury. IBM supplied the Task Force with "buy money" to enable
14 Bourget to purchase documents and information from the suspected
15 thieves, while under surveillance. IBM also provided the Task Force
16 with money for expenses incurred during the course of the
17 investigation that could not be covered by the local budget. IBM also
18 rented an airplane that was used by members of the Task Force for
19 travel during the course of the investigation. It is clear that "but for"
20 IBM's involvement, there would have been no investigation, and
21 Arnold never would have been arrested or indicted or had his residence
22 searched.

23 There is no evidence of such extensive involvement in the criminal proceedings in
24 this case.

25 The case that the *IBM* decision relied on (and which contains the reference to
26 preliminary steps) also rested on evidence of extensive involvement in the
27 commitment proceedings. There, the complaint alleged that the defendants willfully
28 refused to advise the court that they had ignored its order and were detaining

1 plaintiff against his wishes, and that they filed a false return stating that they had
2 followed the court's order. On those allegations, the plaintiff's imprisonment would
3 have been caused by the preliminary steps that led to the challenged order. *Hoffman*
4 *v. Halden*, 268 F.2d 280, 297-98 (9th Cir. 1959). There are no such facts in this
5 case.

6 The *Whitlock* case acknowledged that "an officer (or investigating
7 prosecutor) fabricates evidence and puts that fabricated evidence in a drawer,
8 making no further use of it, then the officer has not violated due process; the action
9 did not cause an infringement of anyone's liberty interest." It found evidence of
10 cause in fact, "because [the fabrication] was introduced against them at trial, was
11 instrumental in their convictions." *Whitlock v. Brueggemann*, 682 F.3d 567, 582
12 (7th Cir. 2012). By contrast, here, Officer East's written statement was not
13 introduced at trial, and played no role in his conviction.

14 *Pacific Shores Props., Ltd. Liab. Co. v. City of Newport Beach*, 730 F.3d
15 1142, 11680 (9th Cir. 2013) had nothing to do with the elements of a fabrication
16 claim under section 1983. It discussed causation principles applicable to anti-
17 discrimination statutes, which require evidence that "that it is more probable that
18 the event was caused by the defendant than that it is not." There is no such evidence
19 in this case.

20 The portion of the *Gregory* case that the supplemental opposition relies on
21 was concerned with the defendants' absolute immunity defense, not with the
22 causation element of a fabrication claim. *Gregory v. City of Louisville*, 444 F.3d
23 725, 741-42 (6th Cir. 2006).

Conclusion

In the operative complaint, Tobias affirmatively alleged that the “only reason” he was prosecuted and convicted was the confession that the LAPD Detectives extracted from him when they interrogated him. [Dkt. 67, pp. 34-35] None of the evidence that he cites in his supplemental opposition is sufficient to create a triable issue as to that allegation. The chronology of events established by the record of the criminal investigation, the sworn testimony of those involved, and the allegations of Tobias’s complaint show that there was no point at which Officer East’s written statement deprived Tobias of his liberty.

Therefore, the Court should grant summary judgment to Officer East.

Dated: February 11, 2022

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